

1                   **IN THE UNITED STATES DISTRICT COURT**  
2                   **FOR THE WESTERN DISTRICT OF TEXAS**  
3                   **AUSTIN DIVISION**

4                   WHOLE WOMAN'S HEALTH ALLIANCE, FUND TEXAS       ) AU:18-CV-00500-LY  
5                   CHOICE, LILITH FUND, INC., NORTH TEXAS EQUAL )  
6                   ACCESS FUND, THE AFIYA CENTER, WEST FUND,     )  
7                   BHAVIK KUMAR, M.D., M.P.H.,                 )  
8                   )  
9                   Plaintiffs,                                     )  
10                  )  
11                  )  
12                  v.   ) AUSTIN, TEXAS  
13                  )  
14                  )  
15                  KEN PAXTON, CECILE YOUNG, JOHN W.         )  
16                  HELLERSTEDT, M.D., SCOTT FRESHOUR,         )  
17                  LARRY R. FAULKNER, PH.D., DAVID ESCAMILLA, )  
18                  STEPHEN BRINT CARLTON, JAMES B. MILLIKEN, )  
19                  )  
20                  Defendants.                                     ) JULY 23, 2020

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22                  TRANSCRIPT OF TELEPHONE CONFERENCE  
23                  BEFORE THE HONORABLE LEE YEAKEL  
24                  \*\*\*\*\*

25                  APPEARANCES:

1                  FOR THE PLAINTIFFS: RUPALI SHARMA  
2                   LAWYERING PROJECT  
3                   110 WINTER STREET, APT. 4  
4                   PORTLAND, MAINE 04102

5                  STEPHANIE TOTI  
6                   LAWYERING PROJECT  
7                   25 BROADWAY, 9TH FLOOR  
8                   NEW YORK, NEW YORK 10004

9                  FOR THE DEFENDANTS: ANDREW BOWMAN STEPHENS  
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11                 PO BOX 12548  
12                 AUSTIN, TEXAS 78711

13                 HEATHER GEBELIN HACKER  
14                 OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
15                 209 WEST 14TH STREET, 7TH FLOOR  
16                 AUSTIN, TEXAS 78701

1                   LESLIE W. DIPPEL  
2                   ANTHONY J. Nelson  
3                   TRAVIS COUNTY ATTORNEY'S OFFICE  
4                   314 W. 11TH STREET, ROOM 500  
5                   AUSTIN, TEXAS 78767

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24                 COURT REPORTER:         ARLINDA RODRIGUEZ, CSR  
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   (512) 391-8791

24                 Proceedings recorded by computerized stenography, transcript  
25                  produced by computer.

10:31:05 1 (In chambers)

10:31:05 2 THE COURT: Good morning. Let me start with who's on

10:31:13 3 the line for the plaintiff, and state who you are, please.

10:31:19 4 MS. SHARMA: Your Honor, you have Rupali Sharma for

10:31:21 5 the plaintiff.

10:31:23 6 THE COURT: Anyone else?

10:31:25 7 MS. TOTI: Stephanie Toti for the plaintiffs.

10:31:34 8 THE COURT: All right. Anyone else for the

10:31:35 9 plaintiff?

10:31:38 10 (No response)

10:31:38 11 THE COURT: All right. Let's move over to the

10:31:41 12 defendants, and in what ever order you want to do this, please

10:31:47 13 proceed.

10:31:48 14 MR. STEPHENS: Judge, Andrew Stephens for the State

10:31:53 15 defendants as well as UT Systems.

10:31:58 16 THE COURT: All right.

10:31:59 17 MS. HACKER: Heather Hacker, also for the State,

10:32:01 18 Your Honor.

10:32:04 19 THE COURT: Thank you.

10:32:05 20 MR. BIGGS: Adam Biggs, also for the State

10:32:07 21 defendants, Your Honor.

10:32:14 22 THE COURT: All right.

10:32:16 23 MS. DIPPEL: This is Leslie Dippel for the Travis

10:32:18 24 council defendants.

10:32:22 25 MR. NELSON: Your Honor, Tony Nelson for Travis

10:32:25 1 County Defendant Escamilla.

10:32:31 2 THE COURT: All right. If there is no one else,  
10:32:35 3 we're here for a telephonic status conference. As you-all  
10:32:45 4 know, this case was stayed in February pending a decision out  
10:32:49 5 of the Supreme Court in *Juno Medical*, which may or may not have  
10:32:52 6 had any effect on this case. So it remains pending.

10:32:55 7 So I'll start, I guess, because I generally just do  
10:33:00 8 this as a default, start with the plaintiff. Ms. Sharma,  
10:33:04 9 Ms. Toti, where do you think we are in this case?

10:33:11 10 MS. SHARMA: Your Honor, now that the Supreme Court  
10:33:13 11 has issued its decision, plaintiffs would ask the Court to lift  
10:33:16 12 the stay in the case. And plaintiffs would also request the  
10:33:19 13 opportunity for supplemental briefing to just -- to draft the  
10:33:25 14 impact of *Juno Medical* on defendants' pending motions to  
10:33:27 15 dismiss.

10:33:31 16 THE COURT: All right. Ms. Toti, anything to add?

10:33:33 17 MS. TOTI: No, Your Honor. Thank you.

10:33:38 18 THE COURT: All right. Mr. Stephens?

10:33:40 19 MR. STEPHENS: Judge, yes. We agree -- the  
10:33:42 20 defendants agree that the stay should be lifted in the case in  
10:33:47 21 light of the *Juno Medical* ruling. However, as the court is  
10:33:53 22 aware, the case -- the motion to dismiss has been pending, and  
10:33:58 23 we believe that, as argued in our motion to dismiss, the case  
10:34:04 24 should be dismissed and that *Juno Medical* only strengthens our  
10:34:08 25 argument.

10:34:08 1 We don't think it affects the county and UT Systems,  
10:34:12 2 that June Medical affects that, but we would be willing to  
10:34:15 3 submit limited supplemental briefing, maybe a letter brief  
10:34:21 4 limited to three pages by end of next week. But as the case is  
10:34:28 5 pled now, we think it has to be dismissed if plaintiffs intend  
10:34:33 6 to stand on their existing complaint.

10:34:36 7 THE COURT: All right. And Ms. Dippel?

10:34:43 8 MS. DIPPEL: Defendants agree -- the Travis County  
10:34:46 9 defendant also agrees that the stay should be lifted and can  
10:34:49 10 agree to any supplemental briefing that the Court desires.

10:34:53 11 THE COURT: All right. Mr. Nelson, do you have  
10:34:55 12 anything to add.

10:34:57 13 (No response)

10:35:03 14 THE COURT: I guess not.

10:35:04 15 All right. Ms. Sharma, if --

10:35:08 16 MR. NELSON: I'm sorry, Your Honor. I had my mute on  
10:35:11 17 I apologize. The only thing we would add is we would submit  
10:35:15 18 that our briefs to dismiss are ripe for ruling with respect to  
10:35:21 19 County Attorney Escamilla, and we would ask that the Court rule  
10:35:26 20 with respect to this motion to dismiss.

10:35:30 21 THE COURT: Mr. Nelson, it's always better to be mute  
10:35:33 22 than moot, isn't it.

10:35:35 23 MR. NELSON: Yes, sir.

10:35:37 24 THE COURT: All right. Ms. Sharma, Ms. Toti,  
10:35:39 25 anything to add?

10:35:43 1 MS. SHARMA: Your Honor, the only thing I would add  
10:35:45 2 is that the supplemental briefing we had in mind would be  
10:35:49 3 fuller than just a letter brief fuller than three pages. We  
10:35:52 4 would ask for something more along the lines of 15, 20 pages.

10:35:57 5 THE COURT: Tell me why you would possibly need 15 to  
10:36:00 6 20 pages to tell me about *Juno Medical*, because my reaction to  
10:36:06 7 it is that it does not affect anything that's going on in this  
10:36:11 8 case. And, even if it does, it could not possibly take 15 to  
10:36:18 9 20 pages to tell me about it, and I don't need a rehash of any  
10:36:24 10 facts of this case. You already have that briefed.

10:36:27 11 The facts in this case, to my knowledge, have not  
10:36:32 12 changed, so I'm not inclined -- I might be inclined to go  
10:36:37 13 farther than a three- to five-page letter brief, but I'm not  
10:36:41 14 going to do 15 to 20 pages.

10:36:46 15 So here's what I'm going to do: As of this moment,  
10:36:54 16 the stay is lifted. The plaintiffs shall have until August the  
10:37:04 17 6th to file any supplemental briefing -- and by supplemental, I  
10:37:11 18 just mean supplemental: just anything in addition to what  
10:37:14 19 you've already pleaded -- a supplemental brief limited to  
10:37:21 20 10 pages on or before August the 6th.

10:37:30 21 And then any and all defendants who care to may  
10:37:33 22 respond to that, not to exceed five pages, on or before August  
10:37:45 23 the 13th, at which time I will consider then, now that I've  
10:37:49 24 lifted the stay, the motions to dismiss as ripe. I will  
10:37:57 25 schedule them for a telephonic argument if I feel like argument

10:38:02 1 would be helpful to the Court after we go back over the  
10:38:08 2 existing motions to dismiss and responses that I will assure  
10:38:12 3 you that we haven't looked at during the pendency of the stay,  
10:38:16 4 so I need to re-familiarize myself with them as well as any  
10:38:20 5 additional briefing.

10:38:22 6 The plaintiffs may reply to the defendants' response,  
10:38:29 7 but I'm not going to set a time on that. If you need to you  
10:38:33 8 should do it quickly, because the matter is going to be ripe  
10:38:37 9 for ruling as soon as I get the defendants' response. But I  
10:38:44 10 will consider any reply that gets in before I rule on it.

10:38:50 11 MS. SHARMA: Thank you, Your Honor.

10:38:51 12 THE COURT: Then we'll see where we are after that.

10:38:53 13 So any further comments or questions from anybody  
10:38:58 14 representing the plaintiff?

10:39:00 15 MS. SHARMA: No. Thank you.

10:39:03 16 THE COURT: And for anyone representing the  
10:39:08 17 defendants?

10:39:09 18 MR. STEPHENS: No, Your Honor.

10:39:12 19 MS. HACKER: Your Honor, this is Heather Hacker for  
10:39:13 20 the State. I just have one quick clarifying question.

10:39:16 21 THE COURT: All right.

10:39:16 22 MS. HACKER: Is the supplemental briefing limited to  
10:39:19 23 *June Medical* or is it open-ended?

10:39:25 24 THE COURT: Good point. It is limited to *June*  
10:39:26 25 *Medical*, because that was the only reason the case was stayed

10:39:32 1 to lead up to where we are today. So the supplemental --  
10:39:36 2 plaintiffs' supplemental briefing and any response will be  
10:39:39 3 limited to a recitation of how you think *Juno Medical* affects  
10:39:46 4 this case. If anybody wants to go beyond that, they have to  
10:39:49 5 file a motion to enlarge the briefing, and the other side will  
10:39:57 6 have an opportunity to respond to it.

10:39:59 7 Anything else by anyone?

10:40:05 8 MR. NELSON: No, Your Honor.

10:40:05 9 THE COURT: Thank you-all for being available this  
10:40:08 10 morning. Everybody have a good remainder of day and tomorrow a  
10:40:13 11 good weekend. Everybody stay safe, and we'll go forward with  
10:40:19 12 this case. Thank you-all.

10:40:21 13 (End of transcript)

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1 | UNITED STATES DISTRICT COURT )

2 | WESTERN DISTRICT OF TEXAS )

3 I, Arlinda Rodriguez, Official Court Reporter, United  
4 States District Court, Western District of Texas, do certify  
5 that the foregoing is a correct transcript from the record of  
6 proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

10 WITNESS MY OFFICIAL HAND this the 24th day of July 2020.

11

12 /S/ Arlinda Rodriguez  
13 Arlinda Rodriguez, Texas CSR 7753  
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